IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5357 OF 2006

Shri Lingraj Shankar Trigule & Ors. ..Petitioners.
Vs.
Shri Bhimashankar Ganpatrao Patil & Ors...Respondents.

Mr.Shrishail Sakhare, adv. for the Petitioners.
Mr.Sunil S. Shah, adv. for the Respondents.

CORAM : J.H.BHATIA, J.
DATE : AUGUST 17, 2007.

ORAL JUDGMENT:

1. **Rule.** Rule made returnable forthwith. With consent of the parties, matter is taken up for final hearing immediately.

2. Heard the learned counsel for the Parties.

3. The present petitioners had filed an application before the Tehsildar under the Mamlatdar Courts Act seeking injunction restraining the respondents from claiming any right of way through their field. That application was allowed. Against that order, the respondents preferred a revision application before the Deputy Collector, which was rejected on the ground that he had no jurisdiction. Thereafter, the respondents preferred revision application before the learned

Additional Collector. Without deciding the application for condonation of delay, the Additional Collector allowed the revision application. That order was challenged by the present petitioners in Writ Petition No.2807 of 2005 before this Court. The said writ petition was allowed and disposed off by the order dated 15th September, 2005. It was pointed out that the revision application was entertained beyond the period of limitation and without condoning the delay. In view of this, this Court had set aside the order passed by the Additional Collector with direction to consider the application for condonation of delay before proceeding to entertain revision application. Parties were directed to appear before the Additional Collector, Solapur on 28-9-2005. As per that order, parties appeared before the Additional Collector, Solapur and he passed the impugned order dated 17-3-2006 whereby he allowed the delay condonation application and confirmed his earlier order dated 16-9-2004, which was set aside by this Court in Writ Petition No.2807 of 2005.

4. The learned counsel for the Petitioner has brought to my notice that in the impugned order running in eight pages, the concerned Additional Collector has only given reasons for condonation of delay but has not uttered a word about the merits of the case, which he

was required for the purpose of deciding the revision application. In fact, in the order dated 15th September, 2005, this Court had set aside the order dated 16-9-2004 passed by the Additional Collector and had directed him to consider the application for condonation of delay before proceeding to entertain the revision application. It means if he was satisfied that delay should be condoned thereafter he should have heard the parties and passed the reasoned order on that revision application. However, he has only considered the reasons for condonation of delay and did not hear and pass any order as far as the revision application is concerned. Infact, when the order dated 16-9-2004 was already set aside by this Court, the Additional Collector could not have confirmed the said order again. He should have heard the parties and passed a reasoned order on revision application.

5. In view of the above, Writ Petition is allowed. Impugned order to the extent of confirmation of the order dated 16-9-2004 in revision application is hereby set aside. The Additional Collector, Solapur is hereby directed to hear the parties and pass a reasoned order on the revision application no.5 of 2004.

6. Status-quo be maintained till the decision of the revision application by the Additional Collector.

7. Rule made absolute. Writ Petition stands disposed off accordingly.

[J.H.BHATIA, J.]